

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

MOUNTAINEERS FOUNDATION,

Plaintiff,

v.

THE MOUNTAINEERS,

Defendants.

Case No. C19-1819 RSL-TLF

ORDER RE: ELECTRONIC  
DISCOVERY MEET-AND-CONFER

This matter comes before the Court on plaintiff's Motion for Entry of ESI Order (Dkt. 22) and Motion for Protective Order (Dkt. 24). The Court held Oral Argument on March 13, 2020. Dkt. 40. On April 10, 2020 the Court held a second hearing regarding the pending motions. Dkt. 44.

Pursuant to the April 10, 2020 hearing, and under Fed. R. Civ. P. 26, the Court  
ORDERS:

- With regards to third party data sources, the parties are directed to meet and confer to establish a list of proposed subjects and categories of topics subject to discovery.
- The parties are directed to meet and confer regarding the number of sample documents and iterations needed to appropriately test the technical aspects of production. The parties are also directed to select at least one document set for a small production to make sure that all of the

1 technical aspects of the production are working effectively to meet the  
2 standards for proportionality under Fed. R. Civ. P. 26(b).

- 3 • The parties are directed to meet and confer regarding the disclosure of  
4 network architecture. The parties shall consider the proportionality of costs  
5 of production and the privacy interests of third-party donors and  
6 volunteers.
- 7 • Once the remaining issues regarding the ESI order are resolved, the  
8 parties are further directed to define any categories of documents the  
9 parties believe will require additional metadata. The parties are also  
10 directed to reach an agreement allowing for a reasonable disclosure of  
11 metadata for these documents.
- 12 • The parties are directed to submit a final protocol document for electronic  
13 discovery for the Court's review on or before May 7, 2020. The final  
14 proposed protocol shall comply with Fed. R. Civ. P. 26(b) proportionality of  
15 discovery. *See, JP Morgan Chase Bank, N.A. v. DataTreasury Corp.*, 936  
16 F.3d 251, 259-60 (5th Cir. 2019); *Vallejo v. Amgen, Inc.*, 903 F.3d 733,  
17 742-45 (8th Cir. 2018); *Noble Roman's Inc. v. Hattenhauer Distributing*  
18 *Co.*, 314 F.R.D. 304, 307-08 (S.D. Ind. 2016).
- 19 • The parties are also directed to brief the issue of attorney's eyes-only  
20 designation regarding top level executives.
  - 21 ○ Defendant shall file an opening brief on or before April 30, 2020;
  - 22 ○ Plaintiff shall file a responsive brief on or before May 5, 2020; and
  - 23 ○ Defendant shall file a reply brief on or before May 6, 2020.

- A third telephonic hearing is set for May 7, 2020 at 9:30 AM before Magistrate Judge Theresa L. Fricke.

Dated this 29th day of April, 2020.



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Theresa L. Fricke  
United States Magistrate Judge